

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:
	:
Petitioner,	:
	:
v.	: No. _____
	:
GREGORY G. SCHWAB,	:
	:
Respondent.	:
	:

PETITION TO ENFORCE IRS SUMMONS

PETITIONER United States of America, by its undersigned attorney, and for its petition against respondent shows this Court as follows:

1. This proceeding is brought pursuant to 26 U.S.C. §§ 7402(b) and 7604(a) to judicially enforce an Internal Revenue summons.
2. The Court has subject matter jurisdiction pursuant to 26 U.S.C. §§ 7402(b) and 7604(a), and 28 U.S.C. §§ 1340 and 1345.
3. Venue is properly in this District pursuant to 28 U.S.C. §§ 1391(b) and 1396.
4. Petitioner is the United States.
5. Beverly Brewer is a duly commissioned Revenue Officer employed in the Small Business/Self Employed Division of the Internal Revenue Service ("Service"), in Pittsburgh, Pennsylvania. She is authorized to issue Internal Revenue Service summonses under 26 U.S.C. § 7602, and 26 C.F.R. § 301.7602-1.

6. Revenue Officer Brewer is assigned to collect the outstanding federal employment and income taxes of Gregory G. Schwab ("Schwab" or "the taxpayer"). As part of that assignment, Revenue Officer Brewer is investigating Schwab's financial ability to pay the employment tax assessments made against him

7. Schwab is a resident of the Commonwealth of Pennsylvania, having his address at 426 Camfield Street, Pittsburgh, Pennsylvania 15210-1318, within the jurisdiction of this Court.

8. Schwab is an attorney who is admitted to the Bar of Pennsylvania, and maintains a law practice in Allegheny County, Pennsylvania.

9. On the dates set forth below, a delegate of the Secretary of the Treasury of the United States made assessments against Schwab for federal employment taxes (Form 941), interest and civil penalties for the tax quarters also set forth below. The unpaid balances of these assessments, including accrued interest through June 21, 2011, are summarized as follows:

<u>Tax Period Ending</u>	<u>Initial Outstanding Assessment date</u>	<u>Unpaid balances with accruals to 6/20/11</u>
12/31/03	7/10/06	\$ 105.10
3/31/04	6/26/06	\$4,987.94
06/30/04	6/26/06	\$4,222.69
09/30/04	6/26/06	\$4,173.42
12/31/04	6/26/06	\$3,432.14
09/30/05	1/30/06	\$ 536.59
12/31/05	4/17/06	\$4,021.26
06/30/06	10/2/06	<u>\$ 547.45</u>
	[Total:	\$22,026.59]

10. Notices of the assessments referred to above and demands for payment were sent to Schwab. Notwithstanding notices and demands for payment of the employment tax assessments, referred to above, Schwab has failed to pay his employment tax liabilities.

11. Schwab further owes a balance of \$323.20 for Form 940 federal unemployment taxes assessed on January 30, 2006, against him regarding tax year 2002.

12. The Service seeks to collect Schwab's outstanding federal employment tax liabilities. In furtherance of the Service's efforts to collect Schwab's employment tax liabilities, on January 28, 2011, under 26 U.S.C. § 7602, Revenue Officer Brewer issued a summons to him. A true and correct copy of the summons is attached hereto as Exhibit 1 to Revenue Officer Brewer's declaration that is filed with this petition. The summons directed Schwab to appear at her office on February 24, 2011, at 11:00 a.m., to give testimony and to bring with him "[a]ll documents and records . . . regarding assets, liabilities, or accounts held in the taxpayer's name or for the taxpayer's benefit which the taxpayer wholly or partially owns, or in which the taxpayer has a security interest. These records and documents include . . . all bank statements, checkbooks, canceled checks, savings account passbooks, . . . certificates of deposit for the period: from 07/01/2010 to 12/21/2010." (Brewer Decl., Ex. 1.) The summons also seeks other documents, including vehicle registration certificates, deeds, stocks and bonds, notes, judgments, accounts receivable information, and insurance policies. (Id.)

13. In accordance with 26 U.S.C. § 7603, on February 2, 2011, Revenue Officer Brewer delivered an attested copy of the Internal Revenue Service summons to Schwab by leaving it in a sealed envelope affixed to his door at his residence as indicated on the certificate of service that is attached to the summons. (See Brewer Decl., Exhibit 1.)

14. On February 24, 2011, Schwab did not comply with the January 28, 2011 summons issued to him: he neither appeared nor produced any documents. Schwab's refusal to comply with the summons continues to date.

15. When Revenue Officer Brewer issued the January 28, 2011 summons to Schwab, she was not yet assigned to collect his federal income tax liabilities for 2006 and 2007.¹ That is why the summons does not refer to his outstanding federal income tax liabilities in the "periods" section at the top of the summons. Revenue Officer Brewer was assigned to collect Schwab's assessed federal income tax liabilities on April 2, 2011.

16. The Internal Revenue summons seeks relevant information about the Schwab's current financial condition to pay his outstanding employment tax liabilities. The testimony and documents sought may shed light on Schwab's ability to pay those employment tax liabilities.

17. The testimony, and the books, papers, records, or other data sought by the summons are not already in the possession of the Internal Revenue Service.

¹On March 22, 2010, a delegate of the Secretary of the Treasury made income tax and penalty assessments against Schwab for federal income taxes he owes for tax years 2006 and 2007. The total due from Schwab on those federal income tax assessments, with accrued interest through June 21, 2011, is \$98,302.43.

18. As of the date of this petition, no "Justice Department referral" is in effect with respect to the taxpayer. More specifically, no recommendation has been made by the Service to the Department of Justice for a grand jury investigation or criminal prosecution of the taxpayer for the periods under investigation. Moreover, the Department of Justice has not made any request under 26 U.S.C. § 6103(h)(3)(B) for the disclosure of any return or return information (as those terms are defined in the Internal Revenue Code (26 U.S.C. § 6103(b)) relating to the taxpayer.

19. All administrative procedural steps required by the Internal Revenue Code of 1986 (26 U.S.C.) (as amended) for enforcement of the summons have been followed.

WHEREFORE, the petitioner respectfully prays for the following relief:

A. That the Court issue an order directing respondent Schwab to show cause, if any, why he should not comply with and obey the aforementioned summons and each and every requirement thereof;

B. That the Court include in its order, referred to above, authorization for Revenue Officer Brewer or any other IRS employee to serve respondent Schwab with that order, along with a copy of this petition and the declaration of Revenue Officer Brewer;

C. That the Court enter a separate order directing respondent Schwab to obey the aforementioned summons, and each and every requirement thereof by

ordering his appearance for testimony and his production of the books, papers, records, and other documents as required and called for by the terms of the summons, before Revenue Officer Brewer or any other proper officer or employee of the Internal Revenue Service, at such time and place as may be fixed by Revenue Officer Brewer, or any other proper officer or employee of the Internal Revenue Service;

D. That the Court award the United States its costs incurred in maintaining this action; and

E. That the Court grant such other relief as is it deems just and proper.

Dated: July 26, 2011

Respectfully submitted,

DAVID J. HICKTON
United States Attorney

JOHN A. DiCICCO
Principal Deputy Assistant Attorney General

/s/ Charles M. Flesch
CHARLES M. FLESCH
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 227, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6635
E-mail: charles.m.flesch@usdoj.gov